IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

Bail Appl..No. 7702 of 2007()

CP.14/2006 of J.M.F.C.-I, PUNALUR
CRIME NO.48/04 OF ANCHAL POLICE STATION

.....

PETITIONER/2ND ACCUSED

THULASEEDHARAN, S/O.MADAVAN,
PARUVELILTHEKKE ATTATHU VEEDU,
NEELESWARAN P.O., NEDUVATHOOR VILLAGE,
KOTTARAKKARA.

BY ADV. SRI.ALAN PAPALI
SRI.M.REVIKRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, (C.P.NO.14/2006,
JUDICIAL FIRST CLASS MAGISTRATE-I,
PUNALUR), REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 7702 of 2007

- -

Dated this the 14th day of December, 2007

O R D E R

Application for anticipatory bail. The petitioner is the second accused. Altogether there are three accused persons. They face allegations under the Kerala Abkari Act. 1800 litres of spirit was allegedly transported by accused 1 and 2 on behalf of the third accused. First accused is the driver. The petitioner was allegedly available in the vehicle when the vehicle was intercepted. The petitioner took to his heels and could not be apprehended. In the course of investigation the petitioner was not available for arrest. He was not arrested. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings has been registered. The petitioner has not entered appearance. Eventhough the crime is registered in 2004, the committal proceedings are registered in 2006. Reckoning him as absconding, the learned Magistrate has issued coercive process

against the petitioner. He finds such processes chasing him.

2. According to the petitioner he has not appeared before the police or the court. He is willing now to surrender and seek regular bail. But he apprehends that the offence being triable exclusively by the Court of Sessions, his application may not be considered by the learned Magistrate. He therefore relies on the dictum in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) and prays that anticipatory bail may be granted to the petitioner.

3. The learned Prosecutor, in these circumstances, opposes the application for anticipatory bail. He submits that it is for the petitioner now to appear before the learned Magistrate in the pending committal proceedings and seek regular bail. There is absolutely no justification in the prayer for grant of anticipatory bail to the petitioner. He may be directed to resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate and then seek regular bail.

4. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C.

can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

5. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned

Magistrate in the committal proceedings and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

tm